IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2641 OF 2007

Mrs. Sulabha J. Mavelil & Anr. .... Petitioners

Vs.

Yashwant Sahakari Bank Ltd. .... Respondents
& Anr.

Mr. S.S. Patwardhan for the Petitioners
Mr. S.K. Chinchlikar for Respondent no. 1.

CORAM : A.P. DESHPANDE, J.
DATE : 26TH JULY, 2007

P.C.

1) The Petitioner No. 2 is the son of Petitioner no. 1. The Petitioner no. 2 had borrowed an amount of Rs.4,95,000/- from the Respondent No.1- Bank, to which the Respondent no. 2 herein was a guarantor. The Petitioner no. 1 is also a guarantor. The loan of Rs.4,95,000/- was a term loan granted on 12/08/2002. In the year 2003, the Petitioners and the Respondent no. 2 entered into a fresh agreement with the Bank on 31/03/2003 and the property mortgaged, while availing the loan of Rs.4,95,000/-, was continued as a secured asset when the fresh agreement was entered into on 31/03/2003. According to the Respondent- Bank, the

Respondent - Bank proceeded to issue a Notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The Petitioners objected to the said notice. After consideration of the objection, the Respondent Bank proceeded under Section 13(4) and took possession of the mortgaged property and put it to sale. When the property was about to be sold by public auction, the present Petitioners instituted a dispute under Section 91 of the Maharashtra Co-operative Societies Act, 1960 and therein moved an application for injunction seeking to restrain the Respondent from selling the property. The Trial Court granted the temporary injunction.

2) Aggrieved by the temporary injunction order, the Respondent-Bank preferred an appeal against the order, before the Co-operative Appellate Court. The Appellate Court found that in view of the judgment of the Supreme Court in Mardia Chemicals Ltd. and others Vs. Union of India and others reported in (2004) 4 SCC page 311, the Co-operative Court has no jurisdiction to interfere with the action taken by the Bank under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002 and the remedy of the debtor to question the correctness of the action under Section 13(4) would be before the D.R.D., it allowed the Appeal.

3) The learned Counsel for the Petitioners with a view to justify the jurisdiction of the Co-operative Court has placed reliance on Para 51 of the Mardia Chemicals judgment. The Supreme Court has observed in the said paragraph that to a very limited extent jurisdiction of the civil court can also be invoked and for example few exceptions are mentioned, such as when the action is fraudulent or the claim of the Bank may be so absurd and untenable which does not require any probe etc. The present case does not fall within the exceptions and thus the grant of injunction by the Co-operative Court in a dispute was without jurisdiction.

4) Perused the order passed by the Co-operative Appellate Court. The same does not call for any interference whatsoever. There is no merit in the Writ Petition and the same is summarily rejected.

(A.P. DESHPANDE, J.)